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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/595,876

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Jens Muehlsteff

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PHILIPS INTELLECTUAL PROPERTY & STANDARDS

P.O. BOX 3001

BRIARCLIFF MANOR, NY 10510

EXAMINER

SYED, ATIA K

ART UNIT

PAPER NUMBER

3769

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/595,876	<b>Applicant(s)</b> MUEHLSTEFF ET AL.	
	<b>Examiner</b> ATIA SYED	<b>Art Unit</b> 3769	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 October 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 May 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, Applicant has used the term “control means” in the claim. Likewise in claim 2, Applicant has used the term “logic unit” in the claim. In both cases, it is unclear to the examiner if the broadest reasonable interpretation of the claimed invention requires the “control means” and “logic unit” to be interpreted something in-tangible, such as: software, an algorithm, or some other non-tangible computer media; OR tangible structure, such as: a computer, processor, or some form of computer tangible media.

For example in claim 2, there are some reasons to suggest the “logic unit ” may be structure including: (1) figures 2a and 2b, illustrates the “logic unit ” as a box within another box; and (2) the specification states that the logic unit "actuates" and "analyzes" for example see page 6, lines 19-28 and page 7, lines 2-15. However the specification does not make clear that the “logic unit” is structure, for example a controller, processor, or computer tangible media.

As such, the broadest reasonable interpretation of the claims cannot be ascertained by the examiner. It is the examiner's best guess in light of the broadest reasonable interpretation that

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the predictive instrument is not structure, but is a form of software, an algorithm, or some other non-tangible computer media and as such the claim is indefinite.

Claims 3-5 are rejected because they are dependent on rejected claims.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5-6, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Tucker US Patent Number 4,413,620.

1. A device (1) arranged for monitoring a physiological parameter of an individual (2), said device comprising:

a sensor (8) arranged to measure a signal (S1) related to said parameter when said sensor is brought into contact with the individual's skin (50) (*fig 1, sensor 12 measures onset of cough; column 2, lines 48-56*);

an adjustable carrier (6) arranged to support said sensor and to resiliently conform to a body part of the individual so that a contact pressure is applied to the sensor (8) (*fig 1, belt 10 is adjustable; in case of an inflatable belt, air/fluid for the reservoir causes the belt to tighten, column 2, lines 57-67 and column 3, lines 1-14; in case of non-inflatable belt, the mechanical linkage 28 tightens the belt, column 3, lines 28-32*);

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an actuator (10) arranged to interact with the adjustable carrier (6) in order to modify the contact pressure (*mechanical linkage column 2, lines 57-67 or fig 1, mechanical switch 28, column 3, lines 28-32*);

control means (12) arranged to control the contact pressure in dependence on a control signal applied to the actuator (10) (*a control signal is generated from electronics circuit 18 to actuate the valve 24 or mechanical switch 28 to tighten the belt, column 3, lines 45-56*).

2. A device according to claim 1, wherein the control means (24,25) comprises a logic unit (24a, 25a) arranged to evaluate an objective value of the contact pressure (P) and to determine a value of the control signal (CS) based on said evaluation (*control electronics circuit 18 evaluates output of pressure sensors and then determines the control signal of whether or not the belt needs to be tightened, column 3, lines 45-56*).

3. A device according to claim 2, wherein the objective value of the contact pressure (P) is determined from a reading of a further sensor (23) (*the contact pressure is calculated based upon the pressure sensors and additionally/alternatively motion sensors, column 3, lines 33-44*).

4. A device according to claim 2, wherein the adjustable carrier (31) comprises a piece of elastic material (*inflatable belt 10; column 2, lines 48-67 and column 3, lines 1-2; it is Examiner's position that if the belt is inflatable and it expands with air to tighten over the user's abdomen, it is flexible/elastic*), the actuator (36) being arranged to modify the length of said piece upon receipt of the control signal (CS) thereby modifying the contact pressure (*mechanical linkage column 2, lines 57-67 or fig 1; the mechanical linkage is arranged to actuate valve 24 upon detection of sneeze or cough, which inflates the belt. Upon inflation this elastic material*

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*expands in all directions and in this case the circumference/length of the belt changes to tighten over the user's abdomen).*

5. A device according to claim 2, wherein the actuator comprises an inflatable bag (46), said bag being spatially arranged between the adjustable carrier (42) and the sensor (46), a volume of a fluid in said bag being controlled by the control signal (CS) (*fig 1; the actuator comprises tubular passageway or conduits to inflate the belt, when activated the valve 24 inflates the belt with air from the reservoir 22 and from the compressor 20, column 2, lines 57-67 and column 3, lines 1-14*).

6. A monitoring body-wear (4) comprising:

a piece of elastic material (*inflatable belt 10, column 2, lines 48-67 and column 3, lines 1-2, it is Examiner's position that if the belt is inflatable and it expands with air to tighten over the user's abdomen, it is flexible/elastic* ) arranged for supporting a sensor (8) conceived to carry out a measurement of a physiological parameter (S1) of an individual when brought into contact with the individual's skin (*fig 1, sensor 12 measures onset of cough or sneeze when brought into contact with user's abdominal skin*), said belt of material being arranged to conform to a body part of the individual so that a contact pressure (P) is applied to the sensor (8) (*fig 1, sensor 12 measures onset of cough or sneeze and is mounted on an inflatable belt 10, the belt expands with air to tighten over the user's abdomen to apply contact pressure, column 2, lines 48-67 and column 3, lines 1-2*); said monitoring body-wear further comprising:

an actuator (10) arranged to interact with the belt (6) (*mechanical linkage column 2, lines 57-67 or fig 1, mechanical switch 28, column 3, lines 28-32*) in order to modify the contact

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pressure (P) automatically (*the system detects the onset of a sneeze or cough and automatically modify the pressure of the belt, column 3, lines 45-67 and column 4, lines 1-2*).

7. A body-wear according to claim 6, wherein the actuator (36) is arranged to modify the length of said elastic material (31) upon receipt of a control signal (CS) (*mechanical linkage column 2, lines 57-67 or fig 1; the mechanical linkage is arranged to actuate valve 24 upon detection of sneeze or cough, which inflates the belt. Upon inflation this elastic material expands in all directions and in this case the circumference/length of the belt changes to tighten over the user's abdomen*).

8. A body-wear according to claim 6, wherein the actuator comprises an inflatable bag (46), said bag being conceived to be located between the piece of elastic material (42) and the sensor (46) and to change its volume upon receipt of a control signal (CS) (*fig 1, the actuator comprises tubular passageway or conduits to inflate the belt, when activated the valve 24 inflates the belt with air from the reservoir 22 and from the compressor 20, column 2, lines 57-67 and column 3, lines 1-14*).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ATIA SYED whose telephone number is (571)270-7134. The examiner can normally be reached on Monday through Friday, 9:00-5:00 pm, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Johnson can be reached on (571) 272-4768. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/ATIA SYED/  
Examiner, Art Unit 3769

/Michael C. Astorino/  
Primary Examiner, Art Unit 3769

April 8, 2009